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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Local Competition and Broadband Reporting	)	CC Docket No. 99-301
	)	

Comments of Omnipoint Communications, Inc.

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys, respectfully submits its comments in response to the Commission's October 22, 1999 Notice of Proposed Rulemaking ("Notice") in the above-referenced proceeding. Specifically, the Commission proposes to gather information concerning the development of local competition and broadband telecommunications deployment by: (1) requiring carriers with 50,000 or more local access lines or "wireless channels" nationwide to file quarterly subscribership reports, which will not be confidential; and (2) requiring carriers that provide 1,000 or more broadband service lines or wireless channels to file quarterly deployment and infrastructure reports, which will also not be held confidential.

For the reasons shown below, Omnipoint opposes these proposed reporting requirements because they are unnecessary and unduly burdensome, and pose serious confidentiality risks for competitive carriers, especially since carriers already provide competitive data in their Central Office Code Use Survey ("COCUS") filings.. In addition, it currently makes no sense to require wireless carriers to report broadband deployment. As an alternative to the Notice's proposals, Omnipoint strongly suggests that the Commission should obtain data concerning local competition and broadband deployment from the North American Numbering Plan Administrator ("NANPA"), as collected through a reformed,

mandatory version of the current COCUS. This alternative would avoid the serious confidentiality problems posed by the Commission's proposals, and will not require carriers to prepare and file duplicative reports, thereby avoiding taxing any further carriers' already strained resources.

I. The Requested Information Is Proprietary and Competitively Sensitive

Omnipoint takes sharp exception to the Notice's preliminary conclusions that the carrier-specific data that would be collected by the Commission is not competitively sensitive, and that the public interest would be served by making it public.[1] These assumptions are incorrect, are at odds with the Commission's own practices, and must be reconsidered if the Commission is to avoid doing serious harm to the competitiveness of the industry. For the reasons discussed below, it is essential that the Commission recognize the legitimacy of preventing disclosure of carriers' proprietary business information, and the Commission must continue to shield carrier identities or otherwise aggregate such data before releasing it to the public.

The Notice's presumptions are flatly contradicted by industry practice. Information concerning a carrier's state-by-state subscribership and service deployment is guarded by virtually all carriers as highly sensitive and proprietary information. In fact, numerous parties have briefed the Commission regarding the sensitivity of similar number utilization and forecast data in the ongoing Number Resource Optimization rulemaking --

[1] See Notice at ¶¶ 74-76. Indeed, Omnipoint is troubled that the Notice addresses such a serious issue in just three paragraphs of a 98 paragraph document, one of which anticipates the protests of "some parties who may assert that some of the submitted information is sensitive or otherwise protectable," and challenges them to provide "a detailed explanation" of why disclosure would be harmful. Omnipoint believes this approach is not well founded, especially since the Notice provides no analysis of what particular "public awareness and discussion" benefits will be served by publishing this data on a carrier-specific basis.

and the Commission has recognized the legitimacy of these concerns.[2] Carriers protect the subscribership and deployment data addressed in the Notice for the same reason they hold their number usage patterns confidential: it reveals a carrier's growth rate and competitive strategies, and if such information is revealed to competitors, such carriers could become vulnerable to predatory market behavior by incumbents. These are the reasons why Omnipoint – like most other carriers – holds its state-by-state subscribership information proprietary, and carefully guards it against disclosure to the public or other carriers. These are also the reasons why the NANPA holds this data confidential, and utilizes it in a manner which prevents individual carriers from being exposed – such as releasing subscribership and numbering data only in aggregate form, with no identification of individual carriers.

The Notice's conclusions are also perplexing because they break with established Commission precedent treating subscribership and deployment data as confidential. In other contexts where carriers are required to report sensitive data, the Commission has recognized the legitimacy of carriers' confidentiality concerns, and has routinely extended confidential treatment to their reported data in situations where it is not possible to shield the carriers' identities through the use of aggregation. For example, confidential treatment is afforded to the revenue reports submitted for purposes of calculating carrier contributions to the Universal Service and Telecommunications Relay Service Funds,[3] as

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[2] See In the Matter of Number Resource Optimization et al., Notice of Proposed Rulemaking, CC Dkt. 99-200, RM No. 9258, NSD File Nos. L-99-17 and L-99-36 (rel June 2, 1999), at ¶78 (discussing state access to numbering data collected by the NANPA, and noting the recommendation of the North American Numbering Council ("NANC") and commenting parties that carrier-specific data be kept confidential and released to the states only in aggregate form).

[3] This data may not be released is non-aggregated, carrier-specific form unless the entity administering the funds is specifically directed to do so by the Commission. See 47 C.F.R. §

well as other publicized Commission studies on trends in the telecommunications industry.[4] Local competition and broadband deployment data are no different and no less sensitive, and should be similarly protected.

Industry practice and Commission precedent aside, it should be perfectly obvious that revealing carriers' subscribership and deployment data on a carrier-specific and state-specific basis will in fact harm the competitive position of many carriers. This is especially true for non-incumbent carriers and new market entrants in the wireless industry, where information regarding a competitor's build-out and marketing plans is highly prized and subject to ruthless exploitation by those who obtain the subject information. Omnipoint stresses that the release of such proprietary information will not aid competition, but will instead encourage cutthroat tactics by incumbent carriers which will operate to the detriment of customer choice. Revealing the subscribership and deployment data addressed in the Notice will permit incumbent carriers to accurately track their competitors' business strategies, marketing plans, rate of growth, build-out plans and deployment schedules, and would heavily favor incumbents because of their advantageous market position, which is particularly strong in the wireless industry. Given their advantages in size, resources and brand power, as well as the high cost of building a competitive wireless network, incumbent carriers may discourage the entry of their competitors altogether by beating them to market. Armed with a new licensee's

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54.711(b) (the USF fund administrator shall not disclose disaggregated carrier data unless directed to do so by the Commission) and 47 C.F.R. § 64.604(c)(4)(iii)(I) (the TRS fund administrator shall not disclose disaggregated carrier data unless directed to do so by the Commission).

[4] See, e.g., FCC, Common Carrier Bureau, Industry Analysis Division, FCC Releases: Study on Telephone Trends (Feb. 19, 1999); see also FCC, Common Carrier Bureau, Industry Analysis Division, Telecommunications Industry Revenue: 1997 (1998).

deployment schedule, entrenched competitors can position themselves to be the first to market every time. Bolstering incumbents in this manner would be flatly incompatible with the Commission's general obligation to foster competition, and adverse to the Commission's specific obligation under Section 309(j) of the Communications Act of 1934 to promote the participation of small businesses and rural carriers in the provision of advanced telecommunications services.

Aside from the Notice's conclusory statement that publicizing this data will serve both the Commission's purposes and "general discussion and public awareness," the Notice also fails to perform even the most cursory analysis of why this proprietary data must be publicized on a state-specific and carrier-specific basis.[5] If any public policy goal is served by making information on local competition and broadband deployment available, Omnipoint strongly believes that it may just as easily served by making this information available in the aggregate, with the identities of individual carriers removed, or by publicizing carrier subscribership only at the national level. Moreover, as discussed in greater detail below, the Commission could track local and broadband competition by obtaining similar information from the NANPA, especially pursuant to the reforms currently underway which will make the COCUS reporting more accurate, more detailed, and mandatory for all carriers. This information could then be released to the public in

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[5] This approach contradicts the Commission's policy of "ensuring that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage," and its long-standing practice of not authorizing the disclosure of confidential commercial information "on the mere chance that it might be helpful, but insists upon a showing that the information is a necessary link in a chain of evidence that will resolve an issue before the Commission." See In re Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Report and Order, GC Docket No. 96-55, FCC 98-184 (1998), at ¶ 8.

aggregate form, without reference to specific carriers. Any of these measures will protect competition and avoid the damage to carrier confidentiality discussed above.

There is also no statutory support for the Notice's decision to publicize the proprietary data which the Commission would collect from carriers. Section 706 of the Telecommunications Act of 1996 requires the Commission to determine whether advanced services are being deployed to all Americans in "a reasonable and timely fashion." While the Notice concludes that "public scrutiny of the surveyed information will promote a general awareness and public discussion of how local competition is developing and how readily broadband services are being deployed," it is clear that general awareness and public discussion are not the mandate of Section 706. Moreover, it should also be clear that the Commission can perform the assessments required by Section 706 without publicly releasing carriers' sensitive subscriber numbers on a state-by-state basis. To the extent that general awareness and public discussion are in fact needed to aid the Commission in its Section 706 assessment, public release of aggregated numbers should be more than sufficient.

In summary, it is essential that the Commission recognize that the industry's confidentiality concerns are real and legitimate. Carriers should not be required to hand over proprietary information to the public, and to their competitors, on the basis of a poorly-considered and amorphous policy goal which ignores the practices of both the Commission and the telecommunications industry, as well as compelling competitive considerations. In the balance of considerations, it is clear that the strong interest in maintaining the confidentiality of carrier responses substantially outweighs any value in making this information part of the public record. These legitimate confidentiality

concerns and the competitive risks they entail must be addressed as a central issue in this proceeding, rather than being subordinated.

II. The Proposed Report Would Be Both Unnecessary and Unduly Burdensome

In addition to posing serious confidentiality problems and competitive risks, Omnipoint believes that the Commission's proposed reporting requirements are both unnecessary and unduly burdensome on telecommunications carriers. Omnipoint stresses that the Notice fails to provide an adequate justification for the proposed reports, especially given the considerable burden it would place on CMRS providers,[6] and fails to adequately consider other sources of the requested data.[7]

Much of the data that would be gathered by the proposed report will be reported by carriers to the NANPA as part of the new, overhauled COCUS that is currently under development. Unlike the previous COCUS report, participation in the new study will be mandatory, and for this reason it is expected to far more accurately track industry developments. Instead of imposing a new and duplicative reporting requirement, Omnipoint therefore encourages the Commission to pursue its ongoing efforts to reform the COCUS by increasing its frequency and level of detail, and by making participation

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[6] For example, Omnipoint notes that the Commission's proposal to use billing addresses to track subscribership is entirely inappropriate for wireless carriers, most of which offer prepaid services that do not involve monthly billing. The only method of tracking prepaid subscribers would be to use assigned telephone numbers. This method not only would be extremely cumbersome on a state-by-state basis, but more importantly, would not provide meaningful data since mobile subscribers' phone numbers do not necessarily correlate with their local calling areas.

[7] One alternative source would be Securities and Exchange Commission filings, which are subject to comprehensive confidentiality provisions, and which the Commission previously has relied upon in drafting its Annual CMRS Competition Report. See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Fourth Report, FCC 99-136 (rel. June 24, 1999), at n. 11.

mandatory. If the COCUS is properly redesigned and administered, the Commission will be able to obtain more than sufficient data from the NANPA to accurately track local competition and broadband deployment trends.

If the Commission insists on maintaining an additional reporting requirement, separate and discrete from the COCUS, Omnipoint would only support submission of nationwide subscriber numbers on no more than an annual basis.

III. It Makes No Sense for PCS Providers to Report Broadband Deployment

The Notice defines "full broadband or wireless channels" as being "line or wireless channels with information carrying capacity of 200 Kbps" in one or both directions, or "line or wireless channels with capacity greater than 1.544 Mbps in one or both directions.[8] It is Omnipoint's position that providing subscriber information through COCUS, or the alternative described above, is more than sufficient to measure the development of local competition and broadband deployment. Although CMRS providers may now (or in the future) operate "channels" that meet the Commission's definition of broadband, providing this information in addition to the subscriber reporting serves no identifiable purpose and is yet again an unnecessary burden on new market-entrant carriers. As a result, tracking deployment in this manner will not further the Commission's goal of monitoring deployment of advanced services.

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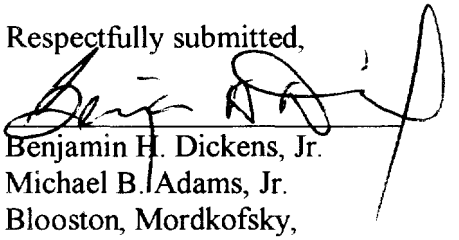
[8] See Notice at ¶ 65 and Attachment B at 1.

IV. Conclusion

It would be ironic if the Commission's effort to gather information concerning local competition and broadband deployment discouraged the positive trends it was intended to track, and imposed needless drains on the resources of competitive carriers in the process. For the foregoing reasons, Omnipoint believes that these would be the unintended results of adopting the reporting requirements proposed in the Notice. Omnipoint therefore encourages the Commission to refrain from imposing these unnecessary reporting requirements on the industry, especially due to the serious confidentiality problems they raise. As a less burdensome alternative that would not reveal confidential data about carriers to the public, Omnipoint encourages the Commission to obtain the subscribership and broadband deployment data it requires from the NANPA, under the new, mandatory COCUS reporting regime which is currently being designed.

Respectfully submitted,



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December 3, 1999

CERTIFICATE OF SERVICE

I, Michael B. Adams, Jr., hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Jackson & Dickens and that a copy of the foregoing **"COMMENTS OF OMNIPOINT COMMUNICATIONS, INC."** was served this 3rd day of December, 1999, by messenger to the persons listed below.

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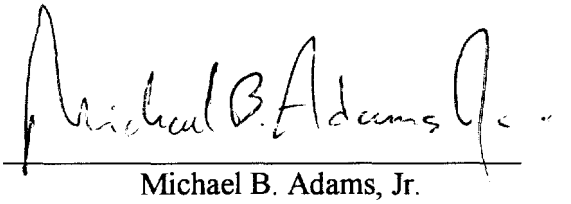

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